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No. 07-1131

FILED

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OFFICE OF THE CLERK
SUPREME COURT, U.S.

In The

Supreme Court of the United States

In re AUGUSTUS SIMMONS,

Petitioner

On Petition For Writ Of Mandamus
To The Supreme Court Of Connecticut

PETITION FOR REHEARING

AUGUSTUS J. SIMMONS
P.O. Box #1
Windsor, CT 06095
(860) 569-6714
Owner-Title Holder

The petitioner herein respectfully moves this Court for an order (1) vacating its denial of the Petition for Writ of Mandamus, entered on May 12, 2008, and (2) granting the petition. As grounds for this motion, petitioner states the following:

STATEMENT OF JURISDICTION

Pursuant to Supreme Court Rule 30.3, this Court has jurisdiction, and the Petition For Rehearing is filed timely today (June 2, 2008) since the date of the Order Denying the Writ was May 12, 2008 in accordance with Rule 44.

This Court's jurisdiction is invoked under 28 U.S.C. § 1651(a).

REVIEW AND REHEARING

1. Rehearing is pleaded for review by this Court that is necessary to clarify how the Fifth and Fourteenth Amendments of the Constitution – [Mandate] – compensation must be paid from [Date-of-Taking], [June, 1, 1962], by a federal agency for an [Exclusive] federal project that included installation of sophisticated navigational aircraft instrumentation, on private property, in the years of 1962 and 1974; wherein the district attorney representing The Federal Agency in Federal Court at Hartford, Connecticut on February 8, 1982, after two (2) [Decades] of

invasion, occupancy, and use, acknowledged before Honorable Jose Cabranes that: The Federal Agency never offered one dollar; never deposited one dollar with any court; never contacted the owner, notwithstanding the fact that federal funds had been allocated, for the project under a 1955 Grant Agreement (App. p. 69, Ex. #11). Whereby, wherein – "The Administrator for and on behalf of the United States hereby offers and agrees to pay, as the United States' share of the cost in accomplishing the project."

Rehearing is necessary to clarify the application of 42 U.S.C. § 4601(6) of Federal Regulations enacted to comply with P.L. 91-646 (1970) (The Uniform Act) wherein the code mandates the benefits – [shall] – be extended to persons displaced by real property acquisitions when the real property is acquired "for a program or project undertaken by a federal agency, or with federal financial assistance" – was intended to benefit individuals who are not willing sellers – AS IN THE CASE AT BAR.

2. Rehearing and review by this Court is necessary, where, in direct violation of the Fifth Amendment mandating compensation for a "FEDERAL TAKING," the [trespassing] federal agency knowingly, intentionally, in BAD FAITH has been executing "LEASES" with the [trespassing] state agent (Connecticut Department of Transportation), who has never owned or legally acquired the subject property, who as a result of a 30-day trial before Referee Shapiro in the *Matter of Simmons v. Parizek* (Chairman of State Aeronautics Comm. at the time), Docket

No. 162923 (Ex. #16) in a Judgment filed with the Superior Court on January 17, 1977 was ordered: *"The defendants, or their successors, within such legal authority as may exist and permit, shall take appropriate steps toward not renewing the lease to the united states relative to the instrument landing lights situated on said Parcel C."* Additionally, *"The defendants or their successors shall pay to the plaintiff the amount of $37,813.64 for rent due thru October 1969, together with an appraisal fee of $1,800.00 and a map allowance of $250.00."*

Where the Basic Acquisition Policy mandate for federal projects (49 C.F.R § 24.102) is crystal clear regarding federal projects and section (d) regarding [establishment and offer of just compensation] makes vividly clear that: before the initiation of negotiations, the agency shall establish an amount which it is believed, is just compensation for the real property. The amount shall not be less than the approved appraisal of the fair market value of the property, taking into account the value of allowable damages or benefits to any remaining property. Promptly thereafter, the agency shall make a [written] offer to the owner to acquire the property for the full amount believed to be just compensation.

Plaintiff's replacement counsel (Rogin-Hirtle) having been familiarized with the applicable federal regulations referenced; having been told and shown the petitioner-owner was the prevailing party in a Judgment before Referee Shapiro and filed with the Superior Court on Jan. 17, 1977; having been sought

out as replacement counsel for Attorney David Salzman who elected to exit from the practice of law prior to participating in hearing dates before Referee Shapiro (Ex. #14) and, after entering into a 38% contingency agreement on December 9, 1977, changed course the following day by notifying the owner – "they were not going to try the case," yet, 24 hours later on December 11, 1977 via phone call, notified the owner a [VERBAL OFFER] was made – without any appraisals; without any hearings; without any process initiated by the agency; and, to the surprise of petitioner-owner, an appearance was filed on December 13, 1977 to engage in [Misprision of a Felony] for the specific purpose of prevailing upon the short-calendar Judge to [NULLIFY] the Judgment of January 17, 1977 under the canopy of [Combining of Cases] without the matter ever being placed on the short-calendar list for a hearing; and, where the statutes are crystal clear that a Judgment – [CANNOT] be attacked, dismantled, made ineffective – for any reason – eleven (11) months after rendition; where no appeal was taken or attempted – is an obvious scenario for a WRIT OF MANDAMUS to the Supreme Court of Connecticut to wipe its record clear of approving, sanctioning a destruction of a valid judgment – rather than – characterizing such malicious, tortious, felonious activity a SUPPLEMENTAL – OR – STIPULATED JUDGMENT.

3. Rehearing is pleaded for a Writ of Mandamus to the reviewing Connecticut Supreme Court approving,

sanctioning the misprision of a felony, that is in direct conflict with C.G.S. 13b-50, section (d) that mandates:

> "Provided, where such acquisition, construction, improvement, enlargement, maintenance, equipment or operation is financed wholly or partly with federal moneys, the municipality, or the commissioner as its agent, may let contracts in the manner prescribed by the federal authorities, acting under the laws of the United States, and any rules or regulations made thereunder, notwithstanding any other state law to the contrary."

4. Rehearing is pleaded for a Writ of Mandamus to the reviewing Connecticut Supreme Court superimposing, transmogrifying, petitioner-owner's tort action (*Simmons v. Wetherall*, No. 163875) into an eminent domain action to override, overrule the Superior Court Judge John Daly's Denial of Illegal and Unconstitutional (off-the-clock) funds where there is [NO RECORD] of any process initiated; no parties notified or served; no decisions or judgments by the trial superior court that has exclusive jurisdiction of real property matters; Honorable Daly cited *Shelton v. Wolthausen*, 80 Conn. 599 (1908) in support of denial of funds to the felonious counsel on August 30, 1979 (Ex. #7 & #7a); Trial Judge Dupont, denied (off-the-clock) funds to lien holders Valente & Allaire on June 7, 1982 who were never notified or served; malicious and tortious private counsel had a right to change of mind and "not try the case on merits." However, they had no right to file an appearance for the sole purpose of obstructing justice

and destroying evidence. Rehearing is pleaded on the factual and legal issues by the trial court where the highest court stated in *United States v. Reynolds*, 397 U.S. 14, 19, 90 S.Ct. 803, 806, 25 L.Ed.2d 12 (1970): Rule 71A(h) "provides that, except for the single issue of just compensation, the trial judge is to decide all issues, legal and factual, that may be presented."

5. This court should provide much needed guidance to the lower courts regarding the application of constitutional protections and uniformity where federal projects and/or programs are at issue; where The Regulations and Basic Acquisition Policies were mandated on every state in the union no later than July 1, 1972 pursuant to P.L. 91-646 (The Uniform Act) by granting this Petition for REHEARING and vacating the Denial of Petition for Writ of Mandamus.

CONCLUSION

For the reasons set forth above, as well as those contained in the Petition for Writ of Mandamus, petitioner prays this Court grant Rehearing of the Order of Denial, vacate that Order, grant the Petition and Review – pursuant to Rule 71A(h) the factual decision of the trial court that was constitutionally

correct where there [WAS NOT] any opinions, judgments, return of service, written offers of just compensation – BEFORE THE TRIAL COURT.

Respectfully submitted,

AUGUSTUS J. SIMMONS
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Owner-Title Holder

CERTIFICATE OF PETITIONER

I, Augustus J. Simmons, owner and title holder in the above captioned case, certify that this Petition for REHEARING is presented in good faith and not for purposes of delay.

Respectfully submitted,

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